

1 Reed R. Kathrein (139304)  
Lucas E. Gilmore (250893)  
2 Danielle Smith (291237)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
3 715 Hearst Avenue, Suite 202  
Berkeley, CA 94710  
4 Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
5 reed@hbsslaw.com  
lucasg@hbsslaw.com  
6 danielles@hbsslaw.com

7 *Attorneys for [Proposed] Lead Plaintiff*  
8 *Patricia Colbert*

9 [Additional counsel on signature page]

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 CITY OF ROSEVILLE EMPLOYEES'  
13 RETIREMENT SYSTEM, Individually and On  
Behalf of All Others Similarly Situated,

14 Plaintiff,

15 v.

16 ALIGN TECHNOLOGY, INC., JOSEPH M.  
17 HOGAN, and JOHN F. MORICI,

18 Defendants.  
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No. 3:20-cv-02897-MMC

**NOTICE OF MOTION AND MOTION OF  
PATRICIA COLBERT FOR  
APPOINTMENT AS LEAD PLAINTIFF,  
AND APPROVAL OF HER SELECTION OF  
LEAD COUNSEL; MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT  
THEREOF**

Date: June 5, 2020

Time: 9:00 a.m.

Courtroom: 7, 19th Floor

Judge: Hon. Maxine M. Chesney

**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that Patricia Colbert (“Movant”) will and hereby does move this Court pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4(a)(3)(B), for an order: (1) appointing Movant as Lead Plaintiff; and (2) appointing Movant’s selection of Hagens Berman Sobol Shapiro LLP (“Hagens Berman”) as lead counsel for the proposed class.

Movant’s motion is based on this notice of motion and motion, the memorandum of points and authorities in support thereof, the declaration of Danielle Smith in support of this motion (“Smith Decl.”), the pleadings on file in this action, oral argument and such other matters as the Court may consider in hearing this motion.

This motion is made on the grounds that Movant believes that she is the most “adequate plaintiff” as defined in the Private Securities Litigation Reform Act of 1995 because she has the largest known financial interest in the relief sought by the Class and has incurred substantial losses as a result of her purchase and/or acquisition of shares of Align securities. Further, Movant satisfies the typicality and adequacy requirements of Federal Rule of Civil Procedure 23.

Pursuant to the Northern District of California’s General Orders 72 and 73, this matter will be decided on the papers by the Court, located at Courtroom 7 on the 19th Floor of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, the Honorable Maxine M. Chesney presiding, or by telephone or video conference on June 5, 2020, at 9:00 a.m., as ordered by the Court.

1 **STATEMENT OF THE ISSUES TO BE DECIDED**

2 1. Whether the Court should appoint Movant as lead plaintiff pursuant to 15 U.S.C. §  
3 78u-4(a)(3)(B); and

4 2. Whether the Court should approve Movant's selection of Hagens Berman as lead  
5 counsel for the proposed class, pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v).

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 This is a federal securities class action brought against Align Technology, Inc. ("Align" or  
9 the "Company") and certain of Align's senior executives and Board members (collectively,  
10 "Defendants"). The complaint alleges that Defendants violates the Securities Exchange Act of 1934  
11 ("Exchange Act") between April 24, 2019 and July 24, 2019 (the "Class Period").

12 The PSLRA states that, the Court "shall appoint the most adequate plaintiff as lead plaintiff  
13 for the consolidated actions." *See* 15 U.S.C. § 78u-4(a)(3)(B)(ii). The lead plaintiff is the "member or  
14 members of the purported plaintiff class that the court determines to be most capable of adequately  
15 representing the interests of class members." 15 U.S.C. § 78u-4(a)(3)(B)(i). Movant should be  
16 appointed lead plaintiff because she: (1) timely filed this Motion; (2) has the largest interest in the  
17 outcome of this litigation; and (3) will typically and adequately represent the class's interests. *See* 15  
18 U.S.C. § 78u-4(a)(3)(B)(iii); *see also* Smith Decl., Exs. A-B, D; *see also In re Atmel Corp. Sec.*  
19 *Litig.*, No. C-03-0558 MMC, 2003 U.S. Dist. LEXIS 26470, at \*8 (N.D. Cal. June 17, 2003)  
20 (Chesney, M.) (appointing individual investor as lead plaintiff).

21 Accordingly, based on Movant's significant financial interest and her commitment to oversee  
22 this action, Movant respectfully requests the Court appoint her as Lead Plaintiff.

23 **II. STATEMENT OF FACTS**

24 The above-captioned action<sup>1</sup> assert violations of Sections 10(b) and 20(a) of the Exchange  
25 Act against Align, a medical device company that designs, manufactures, and markets devices to  
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27 <sup>1</sup> *City of Roseville Employees' Retirement System v. Align Technology, Inc., et al.*, No. 3:20-cv-  
28 02897 (N.D. Cal. Mar. 2, 2020), ECF No. 1 ("Compl.").

1 treat misaligned teeth. The Company's principal products are the Invisalign clear dental aligners and  
 2 the iTero® ("iTero") intraoral scanners, which are used to create digital imagery of patients' teeth for  
 3 the purposes of diagnosing misalignment and fitting Invisalign aligners. Compl. ¶ 20. Align common  
 4 stock trades on the NASDAQ exchange in New York City under the ticker symbol "ALGN." Compl.  
 5 ¶ 10. Defendant John F. Morici ("Morici") was the Company's Chief Financial Officer ("CFO"),  
 6 during the Class Period. Compl. ¶¶ 11-12.

7 This action claims that Defendants violated the Exchange Act for false and misleading  
 8 statements regarding the Company's business, operations and prospects. Specifically, during the  
 9 Class Period, Defendants made numerous materially false and misleading statements that highlighted  
 10 the Company's growth and prospects in China, but failed to disclose that the Company was then  
 11 experiencing a significant downturn in sales of and demand for Invisalign products in China.  
 12 Defendants' Class Period statements about the strength of Align's business in China were materially  
 13 false and misleading because they misrepresented the Company's growth trend in China and created  
 14 the materially misleading impression that demand for Invisalign products in China remained steady  
 15 and that the Company was not impacted by any downturn in consumer sentiment. Defendants'  
 16 statements also allowed the Company's earlier projections for 2019 to remain live and uncorrected in  
 17 the marketplace despite Defendants' knowledge of material undisclosed information that rendered  
 18 them untrue and materially misleading as a result of undisclosed adverse market trends. Compl. ¶ 27.  
 19 These false and misleading statements caused the price of Align securities to be artificially inflated,  
 20 and thereby resulted in the damages suffered by Movant and the other members of the class. Compl.  
 21 ¶¶ 19, 52-53, 57, 59, 65.

22 The truth was revealed on July 24, 2019, after the market closed, when the Company issued a  
 23 press release announcing its financial results for the second quarter of 2019. In the earnings release  
 24 and during a related earnings conference call, Defendants acknowledged the previously undisclosed  
 25 deterioration of Align's business in China, including a lower than expected total Invisalign case  
 26 shipments, a tougher consumer environment, and slower growth in North America. As a result, the  
 27 Company also lowered its guidance for the full 2019 fiscal year. Compl. ¶ 48. On this news, Align's  
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1 stock price plunged, from a market closing price of \$275.16 per share on July 24, 2019, to a drop of  
 2 \$74.26 per share and a closing price of \$200.90 per share on July 25, 2019. Compl. ¶ 50.

3 On March 2, 2020, the named plaintiff's counsel in this action published a notice of pendency  
 4 of that action over the national wire service, *BusinessWire*. Smith Decl., Ex. C. That notice advised  
 5 class members of the existence of the lawsuit and described the claims asserted. *Id.*

### 6 III. ARGUMENT

#### 7 A. Movant Is The Most Adequate Plaintiff

8 Movant should be appointed Lead Plaintiff because she is the movant "most capable of  
 9 adequately representing the interests of class members." 15 U.S.C. § 78u-4(a)(3)(B)(i). The PSLRA  
 10 governs the procedure for selecting the Lead Plaintiff in class actions arising under the federal  
 11 securities laws and provides a presumption in favor of the movant that has the "largest financial  
 12 interest" in the relief sought by the Class and satisfies the relevant requirements of Rule 23. 15  
 13 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb); *see also In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002)  
 14 ("The [PSLRA] provides a simple . . . process for identifying the lead plaintiff pursuant to these  
 15 criteria."). As set forth below, Movant is the "most adequate plaintiff" and is entitled to be appointed  
 16 as Lead Plaintiff.

#### 17 1. The Motion is Timely.

18 Under the PSLRA, any class member may move for appointment as Lead Plaintiff within 60  
 19 days of the publication of notice that the first action asserting substantially the same claims has been  
 20 filed. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i)(II). Here, the notice of pendency was published on  
 21 *BusinessWire* on March 2, 2020, thereby establishing the deadline to move for appointment of lead  
 22 plaintiff on or before May 1, 2020. *See* Smith Decl., Ex. C. Accordingly, Movant has timely moved  
 23 for appointment as Lead Plaintiff through the filing of this Motion.

#### 24 2. Movant Has the Largest Financial Interest in the Relief Sought by the Class.

25 During the Class Period, Movant purchased 18,000 shares of Align stock and suffered  
 26 \$196,667.62 in total net losses. *See* Smith Decl., Exs. A, B. To the best of her knowledge, there are  
 27 no other plaintiffs with a larger financial interest during this Class Period. Therefore, Movant  
 28 satisfies the PSLRA's prerequisite of having the largest financial interest.

1                   **3.       Movant is Typical and Adequate of the Putative Class.**

2                   In addition to possessing the largest financial interest in the outcome of the litigation, Movant  
3 satisfies the requirements of Rule 23. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). On a motion to  
4 serve as Lead Plaintiff, courts focus only on the typicality and adequacy requirements of Rule 23. *In*  
5 *re Cavanaugh*, 306 F.3d at 732 (“Once it determines which plaintiff has the biggest stake, the court  
6 must appoint that plaintiff as lead, unless it finds that he does not satisfy the typicality or adequacy  
7 requirements.”).

8                   Movant satisfies the typicality requirement. “‘The test of typicality is whether other members  
9 have the same or similar injury, whether the action is based on conduct which is not unique to the  
10 named plaintiffs, and whether other class members have been injured by the same course of  
11 conduct.’” *Super Micro Computer, Inc.*, 317 F. Supp. 3d at 1061 (quoting *City of Royal Oak Ret.*  
12 *Sys. v. Juniper Networks, Inc.*, No. 5:11-cv-04003-LHK, 2012 WL 78780, at \*5 (N.D. Cal. Jan. 9,  
13 2012)). Here, “[t]he legal and factual bases of [Movant’s] claim revolve around whether Defendants  
14 publically disseminated false and misleading statements and the effect of those alleged statements.  
15 The same is true for the rest of the putative class.” *Lopes v. Fitbit, Inc.*, No. 4:18-cv-06665-JST,  
16 2019 WL 1865926, at \*2 (N.D. Cal. Apr. 25, 2019) (Tigar, J.).

17                   Movant also satisfies Rule 23’s adequacy requirement. “‘The test for adequacy is whether the  
18 class representative and his counsel ‘have any conflicts of interest with other class members’ and  
19 whether the class representative and his counsel will ‘prosecute the action vigorously on behalf of  
20 the class.’” *Super Micro Computer, Inc.*, 317 F. Supp. 3d at 1061 (quoting *Staton v. Boeing Co.*, 327  
21 F.3d 938, 957 (9th Cir. 2003)). Here, “[Movant’s] interests are closely aligned with those of the  
22 other class members, with no apparent antagonism between them.” *Fitbit, Inc.*, 2019 WL 1865926,  
23 at \*2. Moreover, Movant has the sophistication and incentive to zealously prosecute the Class’s  
24 claims. Movant founded and served as President of a market research and consulting firm in the  
25 technology industry for over thirty years, has over fifty years of experience in managing her own  
26 investment portfolio, has suffered substantial losses, and has selected experienced and qualified  
27 counsel. Smith Decl., Ex. D at ¶¶ 2-6. As demonstrated below, Movant has also “selected counsel  
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1 experienced in securities litigation.” *In re SiRF Tech. Holdings, Inc. Sec. Litig.*, No. C 08-0856  
 2 MMC, 2008 WL 2220601, at \*2 (N.D. Cal. May 27, 2008) (Chesney, M.).

3 **4. The Court Should Approve Movant’s Choice of Lead Counsel.**

4 The PSLRA vests authority in the lead plaintiff to select and retain counsel, subject to the  
 5 Court’s approval. 15 U.S.C. § 78u-4(a)(3)(B)(v); *accord. In re Cavanaugh*, 306 F.3d at 734 n.14.  
 6 “So long as the lead plaintiff has made ‘a reasonable choice of counsel, the district court should  
 7 generally defer to that choice.’” *Super Micro Computer, Inc.*, 317 F. Supp. at 1062.

8 Here, Movant has selected Hagens Berman to serve as lead counsel for the Class. Hagens  
 9 Berman has litigated complex securities fraud actions before this Court (*In re Charles Schwab Secs.*  
 10 *Litig.*, No. 3:08-cv-1510-WHA), and has successfully prosecuted many other securities fraud class  
 11 actions on behalf of injured investors. *See* Smith Decl., Ex. E. After Hagens Berman negotiated two  
 12 settlements resulting in an 82.1% recovery by California class members in the *Schwab* case, the  
 13 Honorable William Alsup commented, “Class counsel did a good job persistently advocating for the  
 14 best interests of the class members, and obtained a very good result for the class . . . .” *In re Charles*  
 15 *Schwab Corp. Sec. Litig.*, No. 3:08-cv-01510-WHA, 2011 WL 1481424, at \*8 (N.D. Cal. Apr. 19,  
 16 2011).

17 If this motion is granted, Hagens Berman will provide members of the Class with the highest  
 18 caliber of representation available. Accordingly, the Court should approve Movant’s selection of  
 19 lead counsel.

20 **IV. CONCLUSION**

21 For all of the foregoing reasons, Movant respectfully requests that this Court: (1) appoint  
 22 Movant to serve as lead plaintiff in this action; (2) approve Movant’s selection of Hagens Berman as  
 23 lead counsel for the Class; and (3) grant such other and further relief as the Court may deem just and  
 24 proper.

26 DATED: May 1, 2020

Respectfully submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP

By: /s/ Danielle Smith

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715 Hearst Avenue, Suite 202  
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Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
reed@hbsslaw.com  
lucasg@hbsslaw.com  
danielles@hbsslaw.com  
  
Steve W. Berman  
HAGENS BERMAN SOBOL SHAPIRO LLP  
1301 Second Avenue, Suite 2000  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594  
steve@hbsslaw.com  
  
*Counsel for [Proposed] Lead Plaintiff  
Patricia Colbert*